

MONTANA LEGISLATIVE HISTORY

Chapter 50.5 19 99

Bill H 115 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-12 ☒ c

1-19 ☒ c

H Comm. Appropriation c

2-2 ☒ c

Date Out 2-16 ☒ c

S. Committee on Judiciary

Hearing Date(s) 3-12 ☒ c

3-23 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 113 Introduced by Younkin *LC0214 Drafter: Everts*

Provide the Department of Environmental Quality with Corrective Action Order Authority under the Montana Hazardous Waste Act

By Request of Department of Environmental Quality

12/18	Introduced		
12/23	Referred to Natural Resources		
1/04	1st Reading		
1/15	Hearing		
1/25	Committee Executive Action--Bill Passed as Amended	20	0
1/25	Committee Report--Bill Passed as Amended		
1/29	2nd Reading Passed	91	6
1/30	3rd Reading Passed	86	8
Transmitted to Senate			
2/01	Referred to Natural Resources		
3/05	Hearing		
3/08	Committee Executive Action--Bill Concurred as Amended	10	0
3/08	Committee Report--Bill Concurred as Amended		
3/09	2nd Reading Concurred	50	0
3/10	3rd Reading Concurred	50	0
Returned to House with Amendments			
4/10	2nd Reading Senate Amendments Concurred	99	0
4/12	3rd Reading Passed as Amended by Senate	99	0
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/15	Signed by President		
4/16	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 425		
	Effective Date: 10/01/1999 - All Sections		

HB 114 Introduced by McCulloch *LC0257 Drafter: Petesch*

Require Vehicles to Yield to a Bus Entering Traffic after Loading or Unloading Passengers;...

12/21	Introduced
1/04	1st Reading
1/04	Referred to Transportation
1/20	Hearing
1/20	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 115 Introduced by McGee *LC0329 Drafter: Higgins*

Increase the Maximum Commitment to the Department of Corrections;...

By Request of Department of Corrections

10/15	Fiscal Note Needed
12/21	Introduced
1/04	1st Reading

1/04	Referred to Judiciary		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/12	Fiscal Note Printed		
1/12	Hearing		
1/19	Committee Executive Action--Bill Passed as Amended	17	2
1/20	Committee Report--Bill Passed as Amended		
1/23	2nd Reading Passed	94	5
1/23	Rereferred to Appropriations		
2/02	Hearing		
2/16	Committee Executive Action--Bill Passed as Amended	18	0
2/17	Committee Report--Bill Passed as Amended		
2/19	Revised Fiscal Note Requested		
2/19	Revised Fiscal Note Received		
2/19	Revised Fiscal Note Printed		
2/19	2nd Reading Passed	100	0
2/20	3rd Reading Passed	99	0
Transmitted to Senate			
2/22	Referred to Judiciary		
3/12	Hearing		
3/24	Committee Executive Action--Bill Concurred as Amended	8	0
3/24	Committee Report--Bill Concurred as Amended		
3/25	Taken from 2nd Reading; Rereferred to Finance and Claims	50	0
4/07	Hearing		
4/08	Committee Executive Action--Bill Concurred	18	0
4/08	Committee Report--Bill Concurred		
4/09	2nd Reading Concurred	49	0
4/10	3rd Reading Concurred	50	0
Returned to House with Amendments			
4/15	2nd Reading Senate Amendments Concurred	97	1
4/16	3rd Reading Passed as Amended by Senate	93	5
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by Speaker		
4/21	Signed by President		
4/22	Transmitted to Governor		
4/28	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 505		
	Effective Date: 4/28/1999 - All Sections		

HB 116 Introduced by McGee *LC0242 Drafter: Lane*

Revise the Penalties for Fourth Offense DUI and Driving with Excessive Alcohol Concentration;...

By Request of Correctional Standards and Oversight Committee

9/24	Fiscal Note Needed
12/21	Introduced
1/04	1st Reading
1/04	Referred to Judiciary
1/04	Fiscal Note Requested
1/08	Fiscal Note Received
1/11	Fiscal Note Signed
1/12	Fiscal Note Printed

HOUSE BILL NO. 115

INTRODUCED BY MCGEE D

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM COMMITMENT TO THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT ALL BUT THE FIRST 5 YEARS OF A COMMITMENT TO THE DEPARTMENT BE SUSPENDED; ALLOWING THE COURT TO SENTENCE AN OFFENDER DIRECTLY TO THE BOOT CAMP INCARCERATION PROGRAM; ALLOWING A PROBATION AND PAROLE OFFICER TO PROVIDE ORAL AUTHORIZATION TO ANOTHER OFFICER WITH THE POWER TO ARREST A PROBATIONER OR A PAROLEE IF THE PROBATION AND PAROLE OFFICER DELIVERS A WRITTEN STATEMENT TO THE PLACE OF DETENTION WITHIN 12 HOURS OF THE ARREST; ALLOWING A COURT TO UNCONDITIONALLY DISCHARGE A PROBATIONER FROM THE REMAINDER OF A SUSPENDED OR DEFERRED SENTENCE UPON THE RECOMMENDATION OF A PROBATION AND PAROLE OFFICER; ALLOWING A PROBATION AND PAROLE OFFICER TO IMPOSE NO MORE THAN A 30-DAY SANCTION FOR DEFENDANTS WHO HAVE VIOLATED CONDITIONS OF PROBATION; PROVIDING FOR A PROBATION VIOLATOR PRISON DIVERSION PROGRAM; ALLOWING THE COURT, UPON THE RECOMMENDATION OF THE BOARD OF PARDONS AND PAROLE, TO UNCONDITIONALLY DISCHARGE A PAROLEE; SPECIFYING THAT AN ONSITE HEARING IS NOT REQUIRED IF A DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE LAW; ESTABLISHING A \$360 A YEAR MAXIMUM SUPERVISORY FEE PAYABLE BY A PROBATIONER OR PAROLEE; ALLOWING THE IMPOSITION OF A SUSPENDED OR DEFERRED SENTENCE UPON SUCCESSFUL COMPLETION OF THE BOOT CAMP INCARCERATION PROGRAM; INCREASING FROM 1 YEAR TO 5 YEARS THE TIME IN WHICH AN OFFENDER WHO HAS SUCCESSFULLY COMPLETED THE BOOT CAMP INCARCERATION PROGRAM MAY PETITION FOR A CHANGE OF SENTENCE; CHANGING THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM; PROVIDING AN APPROPRIATION TO THE DEPARTMENT OF CORRECTIONS TO PAY THE COSTS OF HOLDING PROBATION VIOLATORS IN COUNTY DETENTION CENTERS; AMENDING SECTIONS 46-18-201, 46-23-1011, 46-23-1012, 46-23-1021, 46-23-1023, 46-23-1024, 46-23-1031, 53-30-401, 53-30-402, AND 53-30-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2
3 Section 1. Section 46-18-201, MCA, is amended to read:

4 "46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of
5 an offense upon a verdict or a plea of guilty, the court may:

6 (a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under
7 the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided,
8 not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The
9 sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
10 period of the deferred imposition. Reasonable restrictions or conditions may include:

11 (i) ~~jail~~ detention center base release;

12 (ii) ~~jail time~~ incarceration in a detention center not exceeding 180 days;

13 (iii) conditions for probation;

14 (iv) payment of the costs of confinement;

15 (v) payment of a fine as provided in 46-18-231;

16 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

17 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

18 (viii) with the approval of the facility or program, an order that the offender be placed in a
19 community corrections facility or program as provided in 53-30-321;

20 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
21 department of corrections that space is available, an order that the offender be placed in a prerelease
22 center or prerelease program for a period not to exceed 1 year;

23 (x) community service;

24 (xi) home arrest as provided in Title 46, chapter 18, part 10;

25 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
26 of society;

27 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

28 or

29 (xiv) with the approval of the department of corrections and with a signed statement from an
30 offender that the offender's participation in the boot camp incarceration program is voluntary, an order

1 that the offender complete the boot camp incarceration program established pursuant to 53-30-403; or

2 (xv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii)(xiv).

3 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a
4 period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose
5 on the defendant any reasonable restrictions or conditions during the period of suspended sentence.
6 Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

7 (c) impose a fine as provided by law for the offense;

8 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
9 counsel as provided in 46-8-113;

10 (e) impose a;

11 (i) county jail detention center or state prison sentence, as provided in Title 45, for the offense;

12 or

13 (ii) ~~commit the defendant~~ commitment to the department of corrections for a period not to exceed
14 5 years for placement in an appropriate correctional facility or program; however, all but the first 5 years
15 of the commitment to the department of corrections must be suspended;

16 (f) with the approval of the facility or program, order the offender to be placed in a community
17 corrections facility or program as provided in 53-30-321;

18 (g) with the approval of the prerelease center or prerelease program and confirmation by the
19 department of corrections that space is available, order the offender to be placed in a prerelease center
20 or prerelease program for a period not to exceed 1 year; or

21 (h) impose any combination of subsections (1)(b) through (1)(g).

22 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the
23 victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to
24 the victim as provided in 46-18-241 through 46-18-249.

25 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
26 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
27 a felony, regardless of whether any other conditions are imposed.

28 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
29 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the
30 sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however,

1 must be allowed for ~~jail~~ time served in a detention center or home arrest time already served.

2 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
3 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
4 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
5 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

6 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
7 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

8 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
9 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
10 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
11 suspended.

12 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of
13 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
14 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

15 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
16 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part
17 5.

18 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
19 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
20 offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided
21 in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent
22 or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and
23 for a period of time determined by the department of corrections. The period may not exceed the period
24 of state supervision of the person.

25 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
26 imprisonment of the offender in the state prison, including placement of the offender in a community
27 corrections facility or program or a prerelease center or prerelease program. In considering alternatives
28 to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
29 subsequently sentences the offender to a state prison, the court shall state the reasons why it did not
30 select an alternative to imprisonment, based on the criteria contained in 46-18-225.

1 (12) If a felony sentence includes probation, the department of corrections shall supervise the
2 defendant unless the court specifies otherwise.

3 (13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
4 does not apply to a person sentenced under 46-18-219."

5
6 **Section 2. Section 46-23-1011, MCA, is amended to read:**

7 **"46-23-1011. Supervision on probation. (1) The department shall supervise persons during their**
8 **probation period in accord with the conditions set by a court.**

9 (2) A copy of the conditions of probation must be signed by the probationer and given to the
10 probationer and the probationer's probation and parole officer, who shall report on the probationer's
11 progress under rules of the court.

12 (3) The probation and parole officer shall regularly advise and consult with the probationer to
13 encourage the probationer to improve the probationer's condition and conduct and shall inform the
14 probationer of the restoration of rights on successful completion of the sentence.

15 (4) The probation and parole officer may recommend and a court may modify any condition of
16 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
17 before any condition is modified, and the officer must be given an opportunity to present the officer's
18 ideas or recommendations on any modification. A copy of a modification of conditions must be delivered
19 to the probation and parole officer and the probationer. Waiver or modification of restitution may be
20 ordered only as provided under the provisions of 46-18-246.

21 (5) The probation and parole officer shall keep records as the department or the court may
22 require.

23 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
24 discharge a probationer from supervision before expiration of the probationer's sentence if:

25 (i) the court determines that a conditional discharge from supervision;

26 (A) is in the best interests of the probationer and society; and

27 (B) will not present unreasonable risk of danger to the victim of the offense; and

28 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

29 (b) Upon the recommendation of the probation and parole officer, a court may unconditionally
30 discharge the probationer from the remaining sentence.

1 ~~(b)(c)~~ Subsection (6)(a) does not prohibit a court from revoking the order suspending execution
2 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been
3 conditionally discharged from supervision. A court may not revoke a sentence from which a probationer
4 has been unconditionally discharged.

5 ~~(c)(d)~~ If the department certifies to the court that the workload of a district probation and parole
6 office has exceeded the optimum workload for the district over the preceding 60 days, the court may not
7 place an offender on probation under supervision by that district office unless it grants a conditional
8 discharge to a probationer being supervised by that district office. The department may recommend
9 probationers to the court for conditional discharge. The court may accept or reject the recommendations
10 of the department. The department shall determine the optimum workload for each district probation and
11 parole office."

12
13 Section 3. Section 46-23-1012, MCA, is amended to read:

14 "46-23-1012. Arrest when violations of probation alleged -- probation compliance plan --
15 probation violator prison diversion program. (1) At any time during probation or suspension of sentence,
16 a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release
17 or a notice to appear to answer to a charge of violation. ~~Such~~ The notice ~~shall~~ must be personally served
18 upon the defendant. The warrant ~~shall~~ must authorize all officers named ~~therein~~ in the warrant to return
19 ~~such the~~ defendant to the custody of the court or to any suitable detention facility designated by the
20 court.

21 (2) Any probation and parole officer may arrest ~~such the~~ defendant without a warrant or may
22 deputize any other officer with power of arrest to do so by giving the officer oral authorization and within
23 12 hours delivering to the place of detention him a written statement setting forth that the defendant has,
24 in the judgment of ~~said the~~ the probation and parole officer, violated the conditions of ~~his~~ the defendant's
25 release. ~~Such~~ A written statement or oral authorization delivered with the defendant by the arresting
26 officer to the official in charge of a county ~~jail~~ detention center or other place of detention ~~shall be~~ is
27 sufficient warrant for the detention of the defendant if the probation and parole officer delivers the
28 written statement within 12 hours of the defendant's arrest. The probation and parole officer, after
29 making an arrest, shall present to the detaining authorities a similar statement of the circumstances of
30 violation.

1 (3) Provisions regarding release on bail of ~~persons~~ a person charged with a crime ~~shall be~~ are
2 applicable to the defendants arrested under these provisions.

3 (4) Any probation and parole officer may hold a defendant arrested under subsection (1) without
4 bail for 72 hours. After the arrest of the defendant pursuant to this subsection, a hearings officer for the
5 probation and parole bureau shall hold a hearing within 36 hours of the defendant's arrest. The hearings
6 officer shall determine whether there is probable cause to believe that the defendant has violated a
7 condition of probation and, if probable cause exists, notify the sentencing court and determine an
8 appropriate plan to ensure the defendant's compliance with the conditions of probation. An appropriate
9 plan may include:

10 (a) holding the defendant for a period of time up to 30 days, with credit for any time served from
11 the time of the arrest to the time of the hearing to determine probable cause;

12 (b) a request to the court pursuant to 46-23-1011 to modify the defendant's terms or conditions
13 of probation; or

14 (c) a notification to the court with jurisdiction over the defendant pursuant to 46-23-1013.

15 (5) The department shall adopt policies and procedures to implement a probation violator prison
16 diversion program. If the department is able to sufficiently sanction a defendant with a term in a
17 detention center as provided in subsection (4)(a) for a proven technical violation that could result in the
18 revocation of a suspended or deferred sentence, the department may pay the expense of the detention
19 center costs and pursue payment of costs by the defendant as provided in 7-32-2245. If the action plan
20 developed for the defendant proceeds as provided in subsection (4)(b) or (4)(c), the expenses of the
21 detention must be paid as provided in 7-32-2242."

22
23 NEW SECTION. Section 4. Program evaluation -- report to legislature. The department shall
24 develop evaluation measures to determine and shall report to the 57th and 59th legislatures whether the
25 probation violator prison diversion program:

26 (1) enhanced the department's ability to sanction probation violators and divert them from prison;

27 (2) demonstrated a decline in prison admissions for probation violators; and

28 (3) demonstrated policies and procedures of graduated sanctions that increased compliance with
29 the conditions of probation and decreased technical violations among probation violators for whom the
30 detention center sanction was used.

Section 5. Section 46-23-1021, MCA, is amended to read:

"46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the board.

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision. The board may not revoke the parole of a parolee whom the sentencing court has unconditionally discharged pursuant to subsection (6)(d).

(c) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.

1 (d) After the board has granted a parolee conditional release from parole, the board may
2 recommend to the sentencing court an unconditional discharge of the remaining portion of the parolee's
3 sentence. The sentencing court may unconditionally discharge the parolee from the remaining sentence
4 if:

5 (i) the court finds that the unconditional discharge:

6 (A) is in the best interest of the parolee; and

7 (B) will not present an unreasonable risk of danger to society or to the victim of the offense; and

8 (ii) the offender has paid all restitution and court-ordered financial obligations in full."

9
10 Section 6. Section 46-23-1023, MCA, is amended to read:

11 "46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or
12 conditional release, the department may issue a warrant for the arrest of the released-prisoner parolee
13 for violation of any of the conditions of release or a notice to appear to answer to a charge of violation.
14 The notice shall must be served personally upon the prisoner parolee. The warrant shall must authorize
15 all officers named therein in the warrant to return the prisoner parolee to the actual custody of the penal
16 institution from which he the parolee was released or to any other suitable detention facility designated
17 by the department.

18 (2) Any probation and parole officer may arrest the prisoner parolee without a warrant or may
19 deputize any other officer with power to arrest to do so by giving him the officer oral authorization and
20 within 12 hours delivering to the place of detention a written statement setting forth that the prisoner
21 parolee has, in the judgment of the probation and parole officer, violated the conditions of his the
22 parolee's release. The A written statement or oral authorization delivered with the prisoner parolee by the
23 arresting officer to the official in charge of the institution from which the prisoner parolee was released
24 or other place of detention shall-be is sufficient warrant for the detention of the parolee or conditional
25 releasee if the probation and parole officer delivers a written statement within 12 hours of the arrest. The
26 probation and parole officer, after making an arrest, shall present to the detaining authorities a similar
27 statement of the circumstances of violation.

28 (3) Pending a hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation
29 the prisoner parolee may, if circumstances warrant, be incarcerated in the institution."
30

Section 7. Section 46-23-1024, MCA, is amended to read:

"46-23-1024. Initial hearing after arrest. (1) After the arrest of the ~~prisoner~~ parolee, a hearing must be held within a reasonable time, unless:

(a) the hearing is waived by the parolee; or

(b) the parolee has been charged in any court with a violation of the law.

(2) The hearing is an onsite hearing and must be held to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts ~~which~~ that would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, ~~must~~ shall preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own behalf and introduce relevant information to the hearings officer.

~~(2)~~(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025."

Section 8. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees -- account established. (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. The fee must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) District court clerks shall deduct from the total fees collected pursuant to subsection (1) the

1 administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into
2 the state special revenue account established in subsection (2)(a)."

3
4 **Section 9.** Section 53-30-401, MCA, is amended to read:

5 **"53-30-401. Definitions.** As used in this part, unless the context requires otherwise, the following
6 definitions apply:

7 (1) "Department" means the department of corrections provided for in 2-15-2301.

8 (2) "Reduction of sentence" includes changing an incarceration sentence to a ~~grant of probation~~
9 suspended sentence or a deferred imposition of sentence."

10
11 **Section 10.** Section 53-30-402, MCA, is amended to read:

12 **"53-30-402. Sentence reduction for offenders.** A sentencing court retains jurisdiction for purposes
13 of this section. A sentencing court may order a reduction of sentence for a convicted offender who:

14 (1) is certified by the department as having successfully completed the boot camp incarceration
15 program; and

16 (2) applies to the court within ~~1 year~~ 5 years after beginning to serve a sentence at a correctional
17 institution."

18
19 **Section 11.** Section 53-30-403, MCA, is amended to read:

20 **"53-30-403. Boot camp incarceration program -- eligibility -- rulemaking.** (1) The department shall
21 establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

22 (2) In order to be eligible for participation in the boot camp incarceration program, an inmate
23 must:

24 (a) be serving a sentence of at least 1 year in a Montana correctional institution for a felony
25 offense other than a felony punishable by ~~life imprisonment or death~~;

26 (b) ~~be less than 35 years of age~~ obtain the concurrence of the sentencing court; and

27 (c) pass a physical examination to ensure sufficient health for participation.

28 (3) The boot camp incarceration program must include:

29 (a) as a major component, a strong emphasis on work, physical activity, physical conditioning,
30 and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

NEW SECTION. Section 12. Appropriation. There is appropriated \$400,000 from the general fund to the department of corrections for the probation violator prison diversion program for the biennium beginning July 1, 1999.

NEW SECTION. Section 13. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 4].

NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 15. Applicability. (1) [Section 1] applies to all persons sentenced on or after [the effective date of this act].

(2) [Sections 2 and 5] apply to all persons under probation or parole supervision on or after [the

1 effective date of this act].

2 (3) [Sections 9 through 11] apply to all persons under the custody of the department of
3 corrections on or after [the effective date of this act].

4 - END -

FISCAL NOTE

Bill #: HB0115

Title: Revise laws governing commitments to
boot camp and Department of
Corrections

Primary
Sponsor: Dan McGee

Status: As introduced

1-11-99
Sponsor signature Date

Dave Lewis 1-9-99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000</u> <u>Difference</u>	<u>FY2001</u> <u>Difference</u>
Expenditures:		
General Fund	\$200,000	\$200,000
State Special Revenue	22,560	22,560
Revenue:		
State Special Revenue	\$22,560	\$22,560
Net Impact on General Fund Balance:	(\$200,000)	(\$200,000)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. A court's use of the sentencing option outlined in Section 1 cannot be predicted; therefore any cost and/or savings associated with this option cannot be estimated.,
2. Sections 3 and 12 of the bill include an appropriation of \$200,000 each year to pay the costs associated with a probation violator prison diversion program. This would pay for the placements in county jails and the associated program evaluation costs. This cost could be offset by the savings due to diversion of offenders from prison incarceration; however, the savings cannot be estimated.

HB 115

12

3. The Department of Corrections (DOC) anticipates receipts of \$22,560 each fiscal year from increased supervision fees for the following services: Intensive Supervision Program (ISP) phase one supervision from \$10 to \$30/month, ISP phase two and phase three \$10 to \$20/month, and extended supervision from \$10 to \$20/month. In calculating the supervision fee revenue increase, the DOC assumed that the collection rate would remain consistent with FY 1998. The fiscal note assumes that these supervisory fees will not be affected by CI-75 because they are exempt as restitution charges paid to the state.

FISCAL IMPACT:

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
<u>Expenditures:</u>		
Operating Expenses	\$222,560	\$222,560
<u>Funding:</u>		
General Fund (01)	\$200,000	\$200,000
State Special Revenue (02)	<u>22,560</u>	<u>22,560</u>
TOTAL	\$222,560	\$222,560
<u>Revenues:</u>		
State Special Revenue (02)	\$22,560	\$22,560
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	(\$200,000)	(\$200,000)

TECHNICAL NOTES:

Need confirmation that the supervisory fees in Section 8 probably are not subject to CI-75 because they are restitution charges paid to the state.

FISCAL NOTE

Bill #: HB0115

Title: Revise laws governing commitments to boot camp and Department of Corrections

Primary Sponsor: Dan McGee

Status: Second reading, amended

Sponsor signature	Date	Dave Lewis, Budget Director	Date
-------------------	------	-----------------------------	------

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
General Fund	\$149,600	\$149,600
State Special Revenue	22,600	22,600
Revenue:		
State Special Revenue	\$22,600	\$22,600
Net Impact on General Fund Balance:	(\$149,600)	(\$149,600)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. A court's use of the sentencing option outlined in Section 1 cannot be predicted; therefore any cost and/or savings associated with this option cannot be estimated.
2. Section 3 provides for a probation violator prison diversion program. In Calendar Year 1998, 219 probationers were revoked and committed to the custody of the Department of Corrections (DOC). The DOC estimates that 67% could have been considered for placement in the diversion program. In addition

(continued)

to these revocations, the DOC believes that 65 probation offenders subjected to an intervention hearing may have received a jail sanction as an intermediate sanction. The DOC estimates jail costs at \$149,600 a fiscal year. This cost could be offset by the savings due to diversion of offenders from prison incarceration; however, because of the many variables involved, such savings cannot be estimated.

3. The DOC anticipates receipts of \$22,600 per fiscal year from increased supervision fees for the following services: Intensive Supervision Program (ISP) phase 1 supervision from \$10 to \$30/month, ISP phase 2 and phase 3 - \$10 to \$20/month, and extended supervision from \$10 to \$20/month. In calculating the supervision fee revenue increase, the DOC assumed that its collection rate would remain consistent with fiscal year 1998. The fiscal note assumes that these supervisory fees will not be affected by CI-75 because they are exempt as restitution charges paid to the state.

FISCAL IMPACT:

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
<u>Expenditures:</u>		
Operating Expenses	\$172,200	\$172,200
<u>Funding:</u>		
General Fund (01)	\$149,600	\$149,600
State Special Revenue (02)	<u>22,600</u>	<u>22,600</u>
TOTAL	\$172,200	\$172,200
<u>Revenues:</u>		
State Special Revenue (02)	\$22,600	\$22,000
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	(\$149,600)	(\$149,600)
State Special Revenue (02)	\$0	\$0

TECHNICAL NOTE:

Confirmation is needed that the supervisory fees in section 8 are not subject to CI-75, because they are restitution charges paid to the state.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

- HB 104** SPONSOR: Hagener, Toni SHORT TITLE: Emergency vote for surcharge for court technology
BY REQUEST OF: Supreme Court
REFERRED ON: 12/23/1998 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 15 - 5
TABLED ON: 02/02/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee
-
- HB 106** SPONSOR: McCulloch, Linda SHORT TITLE: Adopt & implement the nation crime prevention & privacy compact
BY REQUEST OF: Department Of Justice
REFERRED ON: 12/23/1998 HEARD ON: 01/13/1999
EXECUTIVE ACTION: 01/27/1999 Bill Passed as Amended -- VOTE: 14 - 5
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- HB 115** SPONSOR: McGee, Dan SHORT TITLE: Increase the maximum commitment to the dept. of corrections
BY REQUEST OF: Department Of Corrections
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/19/1999 Bill Passed as Amended -- VOTE: 17 - 2
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- HB 116** SPONSOR: McGee, Dan SHORT TITLE: Revise penalties for 4th offense DUI and driving with excessive alcohol level
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/15/1999 Bill Passed as Amended -- VOTE: 18 - 2
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- HB 127** SPONSOR: Johnson, Royal SHORT TITLE: Generally revise child support enforcement laws to improve services
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/04/1999 HEARD ON: 01/18/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 15 - 5
TABLED ON: 02/11/1999
FINAL DISPOSITION 05/10/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C CLARK**, on January 12, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Sam Kitzenberg (R)

Staff Present: John MacMaster, Legislative Services Division
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/12/99HB 104, HB 115, HB116, HB180

Date Posted: 1/6/99

Executive Action: none taken

Chairman Robert Clark called committee to order at 8:00 a.m.
Reiterated information about hand-outs, testifying and
procedures.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 44}

HEARING ON HB 104

Sponsor:

Rep. Hagener opened HB 104.

{Tape : 1; Side : A; Approx. Time Counter : 44 - 58}

Rep. Eggers moved to postpone; Aye-19, Nay-0, 1-Absent

{Tape : 1; Side : A; Approx. Time Counter : 58 - 68}

Proponents:

None

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

None

HEARING ON HB 115

Sponsor:

Rep. McGee stated that the following hand-out would explain bill.

{Tape : 1; Side : A; Approx. Time Counter : 68 - 128}

EXHIBIT(juh08a0

1)

Proponents:

Rick Day, Director of Montana Dept. of Corrections

{Tape : 1; Side : A; Approx. Time Counter : 128 - 245}

EXHIBIT(juh08a0

2)

EXHIBIT(juh08a0

3)

Mike Ferriter, Director of Community Corrections Division,
Montana Dept. of Corrections

{Tape : 1; Side : A; Approx. Time Counter : 245 - 387}

EXHIBIT(juh08a0

4)

EXHIBIT(juh08a0

5)

EXHIBIT(juh08a0

6)

Mary Fay, Bureau Chief, Parole and Probation Officers, Montana
Dept. of Corrections

{Tape : 1; Side : A; Approx. Time Counter : 387 - 502}

EXHIBIT(juh08a0

7)

{Tape : 1; Side : B; Approx. Time Counter : 0 - 10}

Sen. Christiaens, Senator from Great Falls, Montana

{Tape : 1; Side : B; Approx. Time Counter : 10 - 46}

EXHIBIT(juh08a1

0)

(exhibit handed in after meeting)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 46 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 11}

Closing by Sponsor:

Rep. McGee made the closing statement.

{Tape : 2; Side : B; Approx. Time Counter : 11 - 103}

HEARING ON HB 116

Sponsor:

Rep. McGee opened HB 116.

{Tape : 2; Side : B; Approx. Time Counter : 103 - 200}

EXHIBIT(juh08a0

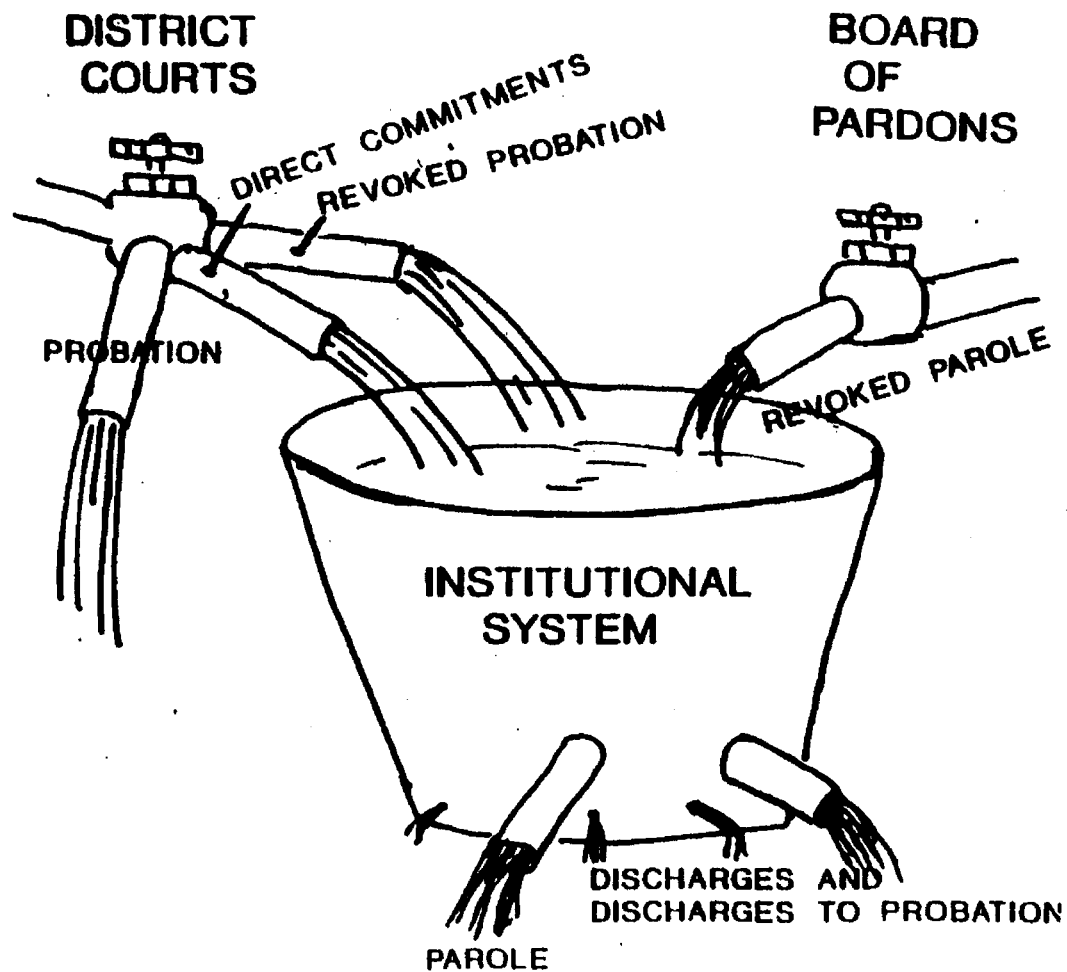
8)

Proponents:

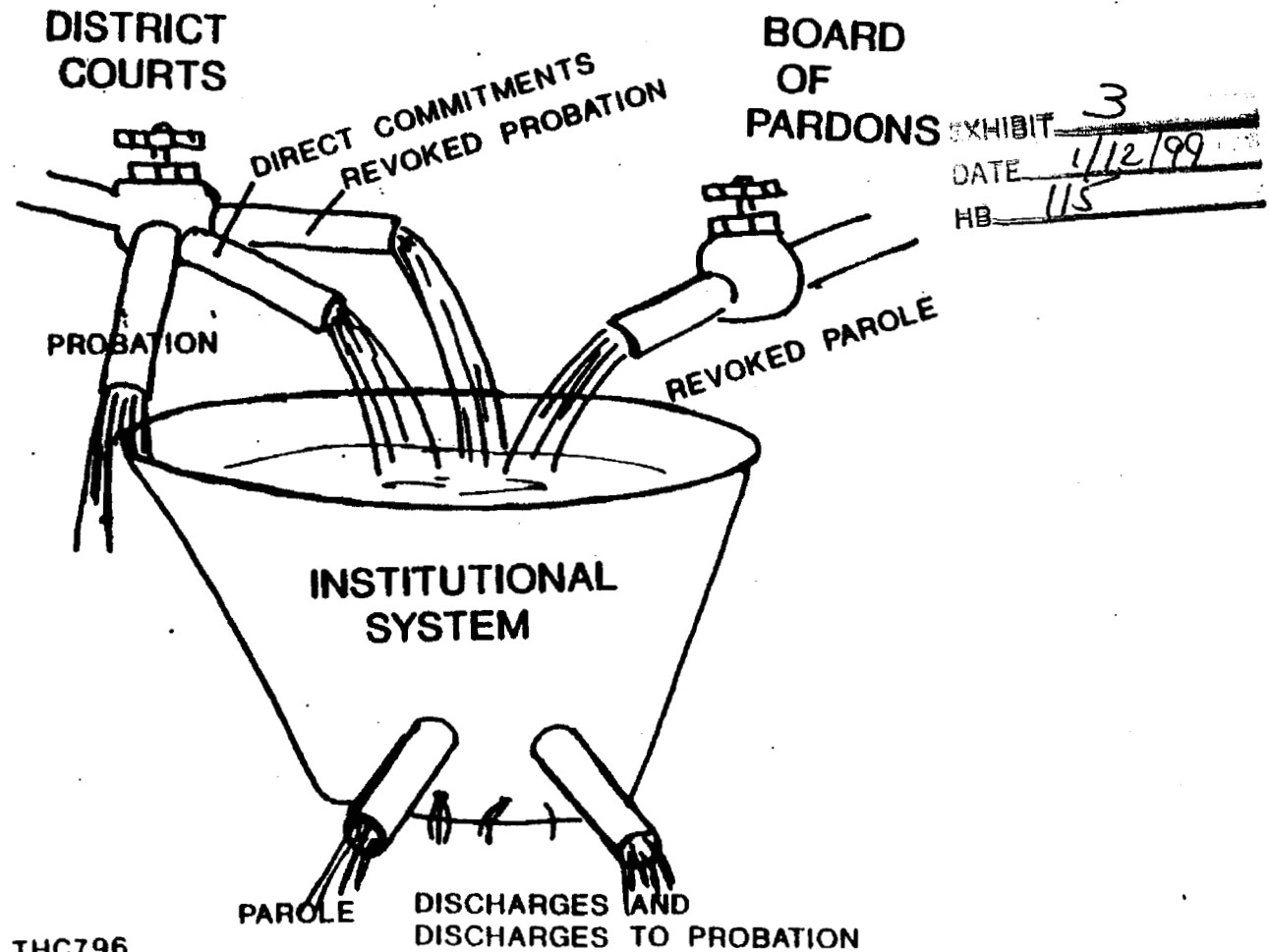
EXHIBIT 2
DATE 1/12/99
HB 115

①

THE "SYSTEM"

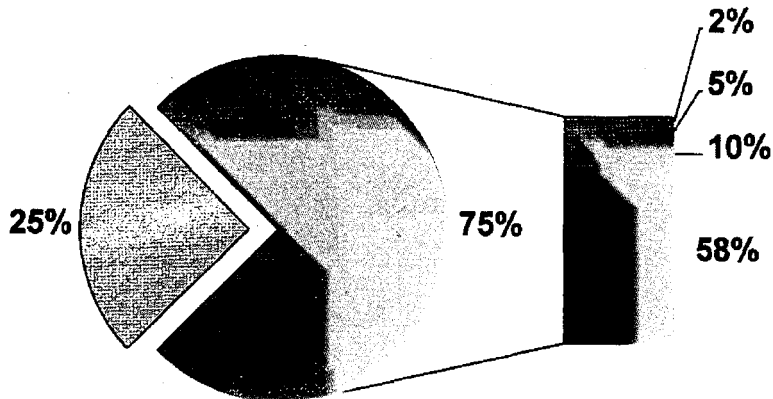


POSSIBLE EFFECT OF SENTENCE ALTERNATIVES



THC796

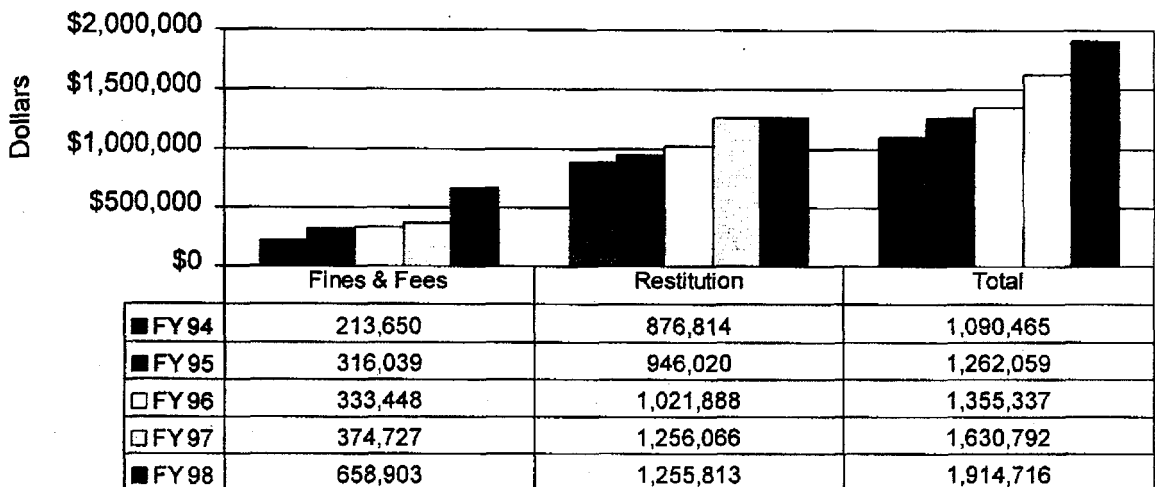
Community Corrections has 75% of Adult Population--Fiscal Year End 1998



■ Secure Custody ■ ISP ■ Prerelease ■ Parole ■ Probation

Secure custody includes all prisons, Treasure State Correctional Training Center and county jail holding.

Fines, Fees & Restitution Paid by Fiscal Year



Offenders supervised by MDOC Probation & Parole Officers

■ FY 94 ■ FY 95 □ FY 96 □ FY 97 ■ FY 98

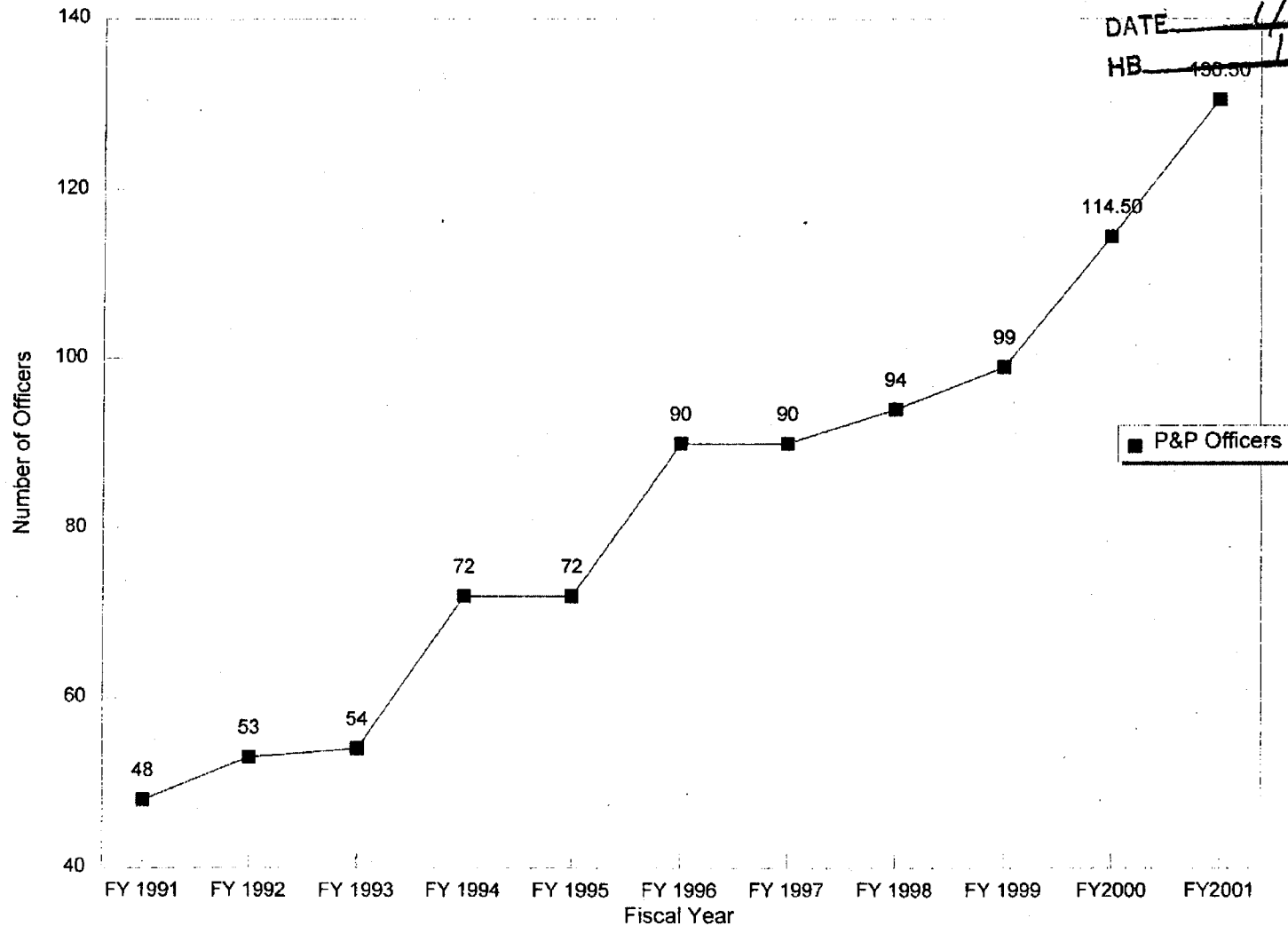
Actual and Projected Adult Institutional Population and Percentage Served by ISP and PRC Programs

Actual				Projected				
Male	FYE 96	FYE 97	FYE 98	FYE 99	FYE 00	FYE 01	FYE 02	FYE 03
Total Institutional Beds	2044	2280	2431	2750	3035	3281	3517	3732
ISP Slots	120	153	141	190	245	245	270	270
Pre-release Beds	260	272	349	349	399	439	439	479
Total Percentage Served by ISP & Pre-release	19%	19%	20%	20%	21%	21%	20%	20%
Actual				Projected				
Female	FYE 96	FYE 97	FYE 98	FYE 99	FYE 00	FYE 01	FYE 02	FYE 03
Total Institutional Beds	138	152	238	254	289	323	358	392
ISP Slots	22	10	35	40	40	40	40	40
Pre-release Beds	43	72	95	104	124	124	124	139
Total Percentage Served by ISP & Pre-release	47%	54%	55%	57%	57%	51%	46%	46%

Compiled from DOC Population Management Plan, September 1998

Probation and Parole Officers

EXHIBIT 6
DATE 1/12/99
HB 115



Probation and Parole – Revocations & Violations

Probation Revocations

Female	FY-94	FY-95	FY-96	FY-97	FY-98
Revocation - Technical Violation	16	19	28	29	24
Revocation - New Conviction	3	3	6	5	8
Revocation - Technical Violation & New Conviction	7	8	10	16	14
Revocation - Technical Violation & New Charges Pending	2	1	4	3	18
Totals	28	31	48	53	64

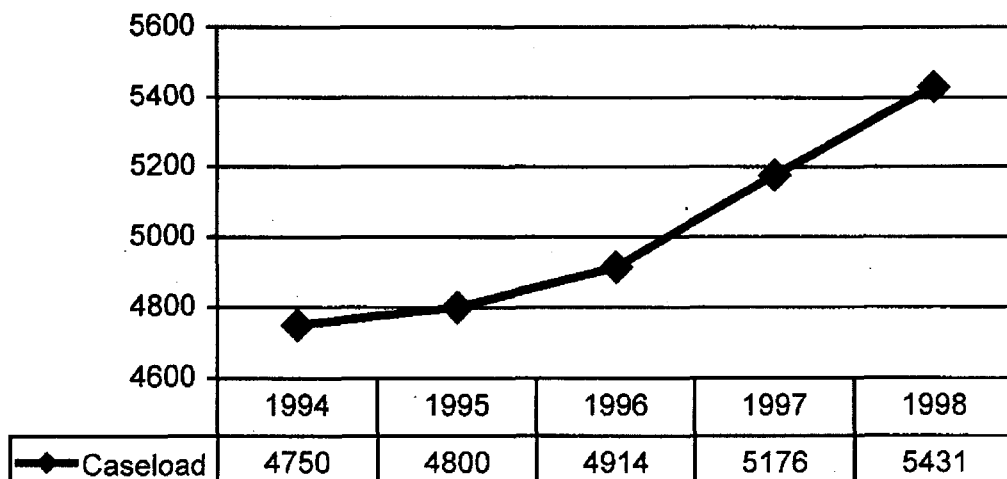
Male	FY-94	FY-95	FY-96	FY-97	FY-98
Revocation - Technical Violation	172	173	182	195	195
Revocation - New Conviction	51	38	46	60	53
Revocation - Technical Violation & New Conviction	73	73	105	115	91
Revocation - Technical Violation & New Charges Pending	13	20	21	18	38
Totals	309	304	354	388	377

	FY-94	FY-95	FY-96	FY-97	FY-98
Parole Violators Male and Female	134	110	133	146	123

Probation Data Based on ACIS records of 11/21/1998

Parole Data reported from Board of Pardons

Caseload for Probation & Parole 1994-1998



10
EXHIBIT / ~~10~~
DATE 1/12/99
43 115

January 12, 1999
Comments
Rick Day, Director
Department of Corrections
Senate Judiciary Committee
HB 115

Mr. Chairman and Members of the House Judiciary Committee: My name is Rick Day, and I am the Director of the Department of Corrections. I appear before the Committee today in Support of HB 115.

HB 115 would make a number of statutory changes. However, overall what it is designed to do is provide increased flexibility to judges and probation & parole officers in the use of alternatives to prison. Alternative sanctions or punishment is normally used for **prison bound offenders** when the crime doesn't rise to the level which would mandate prison time. The benefits of alternative sanctions usually include:

- 1) continuing to hold the offender accountable for job, family support, victims restitution and costs associated with treatment and supervision;
- 2) conserving prison beds for more violent offenders; and
- 3) addressing specific problem areas which may have contributed to the crime.

The risks include the potential for leaving a dangerous inmate in the community, victim dissatisfaction with the level of punishment, and the potential to bring offenders into the system when they would otherwise be on probation (refer to illustrations).

Contrary to some information, the Department has consistently moved to enhance alternative options including in the 55th Session HB 125, HB 136 and HB 100. These bills encouraged options to 4th offense DUI other than long-term incarceration, provided a mechanism for less costly financing for pre-release expansion and development, allowed direct sentencing to pre-release, and clarified various other sections pertaining to alternative programs.

I mention this information in testimony in support of HB 115 because what we are striving to provide is a balanced corrections system based on law and mission which supports the criminal penalties enacted by our legislature and imposed by our courts. A system which has a variety of means to respond effectively to criminal behavior. We believe HB 115 will strengthen the options available to the system but in a manner which should preserve the balance.

HB 115 is also unique in that its content was developed following the Department's careful listening to the Correctional Standards and Oversight Committee and our state's district court judges to find ways to allow for additional judicial flexibility while retaining this balance.

Mike Ferriter, Administrator of the Community Corrections Division, and Mary Fay, Probation & Parole Bureau Chief, will follow me to discuss the provisions of HB 115 in greater detail. I hope my comments will help put this bill and others that come before this committee in perspective.

Finally, I would like to thank Representative McGee for his work with the Department on this bill, and I hope the committee will support HB 115.

EXHIBIT 7
DATE 2/16/99
HB 115

AMENDMENTS TO HB 115

SUBMITTED BY THE DEPARTMENT OF CORRECTIONS

Page 8, line 1.

Following: "57th and"

Strike: "59th"

Insert: "58th"

Page 12, line 2.

Following: "death;"

Insert: "except as provided in 46-18-201 (1) (a) (xiv)."

*are include within death sentence
but are intact not sentenced to death*

Page 12, line 25.

Delete: Section 12 in its entirety.

strip Appropriation

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 19, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: 1/19/1999- HB 214, HB 235, SB 6, SB 32,
Date Posted: 1/14/1999
Executive Action: HB's 54, 213 and 28 Tabled

Closing by Sponsor:

Sen. Grimes made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 263 - 302}

EXECUTIVE ACTION ON HB 213

Motion/Vote: Rep. McGee moved that HB 213 be tabled. Motion carried 12-7 with P. Clark, Eggers, Facey, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 2; Side : B; Approx. Time Counter : 302 - 363}

EXECUTIVE ACTION ON HB 115

Motion/Vote: Rep. McGee moved that HB 115 be amended. Motion carried 18-1 with Wyatt voting no.

EXHIBIT(10)

Motion/Vote: Rep. McGee moved that HB 115 be passed as amended. Motion carried 17-2 with Eggers and Jore voting no.

{Tape : 2; Side : B; Approx. Time Counter : 363 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 375}

EXECUTIVE ACTION ON HB 106

Motion/Vote: Rep. Facey moved HB 106. Motion carried 18-1 with Wyatt voting no.

After much discussion HB 106 was postponed until a later date.

{Tape : 3; Side : A; Approx. Time Counter : 375 - 550}

EXHIBIT(11)

EXHIBIT(12)

EXECUTIVE ACTION ON HB 53

Motion/Vote: Rep. McGee moved that HB 53 be amended. Motion carried unanimously.

Motion/Vote: Rep. Ahner moved that HB 53 be passed as amended.

Motion carried 13-6 with Facey, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 3; Side : B; Approx. Time Counter : 0 - 133}

EXHIBIT(13)

EXECUTIVE ACTION ON HB 54

Amendments to House Bill No. 115
1st Reading Copy

10
4/10/99
HB 115 Exec. Order

Requested by Representative Dan McGee

For the House Judiciary Committee

Prepared by John MacMaster
January 15, 1999

1. Page 3, line 12.

Strike: "or"

2. Page 3, line 13.

Following: "commitment"

Insert: "of a person 21 years of age or older"

3. Page 3, line 15.

Following: "suspended;"

Insert: "or"

(iii) commitment of a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

4. Page 5, line 30.

Following: "sentence"

Insert: "if the court determines that the unconditional discharge is in the best interests of the probationer and society and will not present an unreasonable risk of danger to the victim of the offense and that the probationer has paid all court-ordered restitution and financial obligations"

5. Page 12, line 25.

Insert: "NEW SECTION. Section 14. Coordination instruction."

If House Bill No. 81 and [this act] are both passed and approved and if both contain amendments to 46-18-201(1)(e), then the amendments to 46-18-201(1)(e) contained in House Bill No. 81 are void."

Renumber: subsequent sections

- END -

5. Page 12, line 25.

Insert: "NEW SECTION. Section 14. Coordination instruction.
If House Bill No. 81 and [this act] are both passed and approved
and if both contain amendments to 46-18-201(1)(e), then the
amendments to 46-18-201(1)(e) contained in House Bill No. 81 are
void."

Renumber: subsequent sections

- END -



HOUSE STANDING COMMITTEE REPORT

January 19, 1999

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** report that **House Bill 115** (first reading copy -- white) do pass as amended.

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

And, that such amendments read:

1. Page 3, line 12.

Strike: "or"

2. Page 3, line 13.

Following: "commitment"

Insert: "of a person not referred to in subsection (1)(e)(iii)"

3. Page 3, line 15.

Following: "suspended;"

Insert: "or"

"(iii) commitment of a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

4. Page 5, line 30.

Following: "sentence"

Insert: "if the court determines that the unconditional discharge is in the best interests of the probationer and society and will not present an unreasonable risk of danger to the victim of the offense and that the probationer has paid all court-ordered restitution and financial obligations"

Committee Vote:

Yes 17, No 2.

141503SC.ham

8:35
1-20

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Appropriations -

01:01 PM

- HB 92** **SPONSOR:** Somerville, Roger **SHORT TITLE:** Fund natural resource damage litigation program
 BY REQUEST OF: Department Of Justice
 BY REQUEST OF: Governor
 REFERRED ON: 02/05/1999 **HEARD ON:** 02/16/1999
 EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 16 - 0
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- HB 110** **SPONSOR:** Johnson, Royal **SHORT TITLE:** Water pollution control state revolving fund -- additional bonding authority
 BY REQUEST OF: Department Of Natural Resources And Conservation
 REFERRED ON: 12/23/1998 **HEARD ON:** 01/25/1999
 EXECUTIVE ACTION: 01/26/1999 Bill Passed -- VOTE: 16 - 2
 FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- HB 115** **SPONSOR:** McGee, Dan **SHORT TITLE:** Increase the maximum commitment to the dept. of corrections
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 01/23/1999 **HEARD ON:** 02/02/1999
 EXECUTIVE ACTION: 02/16/1999 Bill Passed as Amended -- VOTE: 18 - 0
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- HB 124** **SPONSOR:** Haines, Dick **SHORT TITLE:** Revise fire suppression liability
 BY REQUEST OF: Department Of Natural Resources And Conservation
 REFERRED ON: 01/30/1999 **HEARD ON:** 02/05/1999
 TABLED ON: 02/09/1999
 FINAL DISPOSITION 03/26/1999 (H) Missed Deadline for Appropriation Bill Transmitt
-
- HB 127** **SPONSOR:** Johnson, Royal **SHORT TITLE:** Generally revise child support enforcement laws to improve services
 BY REQUEST OF: Department Of Public Health And Human Services
 REFERRED ON: 02/20/1999 **HEARD ON:** 03/11/1999
 EXECUTIVE ACTION: 03/15/1999 Bill Passed as Amended -- VOTE: 10 - 8
 FINAL DISPOSITION 05/10/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on February 2, 1999 at 3:00 P.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. John Cobb (R)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Lila Taylor (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. These minutes were recorded on a Sony BI-85 recorder and references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 115, HB 372, HB 6, HB 8,
1/26/1999 and 1/27/1999

HEARING ON HB 115

Opening Statement by Sponsor:

Rep. Daniel "Dan" McGee, Hd 21, presented HB 115.

{Tape : 1; Side : A; Approx. Time Counter : 3 - 50}

Proponents' Testimony:

Rick Day, Director, Department of Corrections (DOC)

{Tape : 1; Side : A; Approx. Time Counter : 50 - 180}

Mike Ferriter, Administrator, Community Corrections, DOC

{Tape : 1; Side : A; Approx. Time Counter : 180 - 229}

Mary Fay, Bureau Chief, Probation/Parole Board, DOC

{Tape : 1; Side : A; Approx. Time Counter : 229 - 339}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 339 - Side : B;

Approx. Time Counter : 120}

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 120 - 137}

HEARING ON HB 6

Opening Statement by Sponsor:

Rep. Matt McCann, HD 92, presented HB 6.

EXHIBIT(1)

{Tape : 1; Side : B; Approx. Time Counter : 137 - 181; Comments :

Chairman Zook commented on subcommittee report.}

Proponents' Testimony:

John Tubbs, Department of Natural Resources and Conservation

{Tape : 1; Side : B; Approx. Time Counter : 181 - 188}

Rebecca Beard, Beard Environmental & Technical Assistance

{Tape : 1; Side : B; Approx. Time Counter : 188 - 249} EXHIBIT(2)

Mona Jamison, Gallatin County

{Tape : 1; Side : B; Approx. Time Counter : 249 - 285}

Opponents' Testimony: None.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By CHAIRMAN TOM ZOOK, on February 16, 1999 at
3:00 P.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Lila Taylor (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: Rep. John Cobb (R)

Members Absent: None.

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Minutes were recorded on a Sony BI-85 recorder and references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date Posted: HB 92, HB 135, HB 532, 2/10/1999
Executive Action: HB 568, SB 48, SB 49, HB 115

EXECUTIVE ACTION ON HB 115

Motion: REP. VICK moved that HB 115 DO PASS.

Discussion:

EXHIBIT(7)

{Tape : 3; Side : A; Approx. Time Counter : 70 - 107}

Motion/Vote: REP. VICK moved that HB 115 BE AMENDED. Motion carried unanimously.

{Tape : 3; Side : A; Approx. Time Counter : 107 - 131}

Motion/Vote: REP. VICK moved that HB 115 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 3; Side : A; Approx. Time Counter : 125 - 140}

EXECUTIVE ACTION ON SB 48

Motion: REP. MCCANN moved that SB 48 BE CONCURRED IN.

Discussion:

{Tape : 3; Side : A; Approx. Time Counter : 131 - 263; Comments : Constitutionality was discussed.}

Vote: Motion carried 14-4 with P.Bergsagel, Buzzas, Kasten, and Peck voting no. Rep. Taylor voted aye by proxy. Rep. E. Bergsagel will carry.

EXECUTIVE ACTION ON SB 49

Motion: REP. MCCANN moved that SB 49 BE CONCURRED IN.

Discussion:

{Tape : 3; Side : A; Approx. Time Counter : 263 - 441}

Vote: Motion carried 17-1 with Vick voting no. Rep. Johnson will carry.

{Tape : 3; Side : A; Approx. Time Counter : 441 - 450}

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

- HB 104** SPONSOR: Hagener, Toni SHORT TITLE: Emergency vote for surcharge for court technology
BY REQUEST OF: Supreme Court
REFERRED ON: 02/23/1999 HEARD ON: 03/02/1999
TABLED ON: 03/02/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee
-
- HB 106** SPONSOR: McCulloch, Linda SHORT TITLE: Adopt & implement the nation crime prevention & privacy compact
BY REQUEST OF: Department Of Justice
REFERRED ON: 02/02/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/17/1999 Bill Concurred -- VOTE: 9 - 0
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- HB 109** SPONSOR: Mercer, John SHORT TITLE: Allow Dept of Justice automated video gambling, accounting and reporting system
BY REQUEST OF: Department Of Justice
REFERRED ON: 03/04/1999 HEARD ON: 03/22/1999 (S) Discussed in Committee ON: 03/24/1999
EXECUTIVE ACTION: 03/27/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned
-
- HB 111** SPONSOR: Guggenheim, Mary Anne SHORT TITLE: Establish standards related to genetic information in issuing health insurance
BY REQUEST OF: State Auditor
REFERRED ON: 02/02/1999
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned
-
- HB 115** SPONSOR: McGee, Dan SHORT TITLE: Increase the maximum commitment to the dept. of corrections
BY REQUEST OF: Department Of Corrections
REFERRED ON: 02/22/1999 HEARD ON: 03/12/1999
EXECUTIVE ACTION: 03/24/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- HB 116** SPONSOR: McGee, Dan SHORT TITLE: Revise penalties for 4th offense DUI and driving with excessive alcohol level
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 01/27/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/04/1999 Bill Concurred as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-

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MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Acting Chairman SEN. RIC HOLDEN, on March 12, 1999 at 9:07 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 366; HB 227; HB 115
Executive Action: HB 227

HEARING ON HB 366

Sponsor: REP. BETTY LOU KASTEN, HD 99, Brockway

Proponents: REP. DAN MCGEE, HD 21, Billings
Jeff Simkovic, Citizen
Colleen Murphy, MT National Association of Social Workers
Linda Sheaver, MT National Association of Social Workers

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, opened on his bill delaying qualifications to go to small claims court. The amendment states that individuals that represent themselves in a small claims court, a partner may represent a partnership, a union may be represented by a union member or union employee, a corporation may be represented by one of its employees, and an association may be represented by one of its members or by a member of the association, and any other organization may be represented by one of its members or employees. The problem revolves around small business. If someone takes a small business to claims court, because they are the director of their own corporation and not an employee it has been held that they can't defend themselves. This bill will treat a corporation exactly like an association, union, or partnership in that one of its employees can show up on behalf of the operation.

{Tape : 1; Side : B; Approx. Time Counter : 17.8 - 21.5}

Proponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 21.5 - 21.7}

Opponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 21.7 - 21.9}

Questions from Committee Members and Responses:

SEN. HALLIGAN asked REP. MOLNAR who testified in the House hearing that was in opposition of the amendments. REP. MOLNAR noted that nearly all of the opposition to the bill has been dealt with by striking sections of the bill that were in question.

{Tape : 1; Side : B; Approx. Time Counter : 21.9 - 22.8}

Closing by Sponsor:

REP. MOLNAR thanked the Committee for a very short hearing and said that the bill was the closest thing to a housekeeping bill as could be.

{Tape : 1; Side : B; Approx. Time Counter : 22.8 - 23.8}

HEARING ON HB 115

Sponsor: REP. DAN MCGEE, HD 21, Southwest area of Billings and Yellowstone County

Proponents: REP. CHRIS CHRISTIANS, HD 23, Cascade County

Mike Ferriter, Administrator of the Corrections
Division

Mike Grayson, Anaconda, Deer Lodge County Attorney

Diana Leibinger-Koch, Department of Corrections

Opponents: Dennis Paxinos, Yellowstone County

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, introduced his bill that was drafted on the request of the Department of Corrections. The bill deals with many topics.

First, it allows the district court judges to impose, as a condition of a deferred or suspended sentence, placement at boot camp.

Second, it provides for longer commitments to the Department of Corrections. This provision continues to allow for a five year placement in a correctional facility or program but expands the courts ability to suspend a portion of longer sentences, thus allowing for extended periods of probation and supervision.

Third, it clarifies when it is appropriate for probation parole officers to recommend to a district court or to a board of pardons for an offender to be conditionally discharged from supervision.

Next, a new provision allows a district court and a board of pardons and parole to unconditionally release an offender from the remainder of his/her sentence when all his/her obligation have been met.

Fifth, significant changes relative to managing the probation violators, the Probation Violator Diversion Program, would allow probation parole officers the ability to authorize an officer with the power of arrest, and the authority to detain a probation or parole violator in a county jail. This is funded out of the Department of Corrections budget.

Sixth, this bill would require the Department to collect the detention cost from the offenders in order to pay for the cost of the detention.

Seventh, the Department of Corrections would report to the next legislative session as to how the program is working.

Next, the bill permits the Probation Parole Bureau to collect up to thirty dollars a month from offenders for supervision.

Finally, the bill allows offenders who have committed offenses

punishable by a life sentence, usually a drug offence, to be eligible for participation at the boot camp.

{Tape : 1; Side : B; Approx. Time Counter : 23.8 - Tape :2; Side : A; Approx. Time Counter : 1.2}

Proponents' Testimony:

REP. CHRIS CHRISTIANS, HD 23, Cascade, rose in support of the bill. REP. CHRISTIENS was a member of the Oversight Committee that worked on a number of bills before the Judiciary Committee, and stands in full support of this particular bill. A couple of different parts of this bill that make great sense are as follows. First, it allows for full judicial discretion. Second, it uses local jails. Third, individual offender pays for their own jail costs. Finally, it removes the age cap for those individuals qualified for boot camp. This bill goes a long way in making some changes that will help with future budgeting for the Department of Corrections. Having the Department report back to the legislature the next two sessions is a good idea.

{Tape : 2; Side : A; Approx. Time Counter : 1.2 - 4.7}

Mike Ferriter, Administrator of the Corrections Division, rose in support of the bill. The bill directly effects many functions of the Community Corrections Division. It enables the Division to move forward with many ideas relative to dealing with more offenders in the community. This bill impacts the Division in three major ways. One, the function and operation of the Treasure State Correctional Training Center, or the boot camp, allowing the camp to broaden the pool of offenders eligible for admittance, and allowing district court judges the option of suspending or deferring a prison sentence who is successful in completing the camp. Two, it allows for suspended sentencing as part of commitments to the Department of Corrections. Third, it makes changes to supervision options for offenders on adult probation and parole. One of the most significant pieces of legislation deals with the ability for the Probation Parole Bureau to sanction probation violators up to a thirty day period of incarceration in local detention centers.

{Tape : 2; Side : A; Approx. Time Counter : 4.7 - 9.4}

John Larson, District Court Judge in Missoula and Mineral County, Fourth Judicial District, rose in support of the bill. He attended some of the Interim Committee meetings. Those issues that relate to sentencing discretion to judges is a good idea. The problems with the five year DOC Commitments were very clearly communicated to the Department and the Committee.

{Tape : 2; Side : A; Approx. Time Counter : 9.4 - 12.4}

Diana Leibinger-Koch, Attorney for the Department of Corrections, rose in support of the bill. She referred to two elements of the bill. It allows the possibility of deferred sentence after the completion of boot camp. The bill speaks to the Probation Diversion Program.

{Tape : 2; Side : A; Approx. Time Counter : 12.4 - 14.7}

Opponents' Testimony:

Mike Grayson, County Attorney for Anaconda, Deer Lodge County, rose in opposition of the bill. Generally there are a lot of provisions in this bill that are excellent. However, there are a few specific concerns that cause opposition unless amended. Sections two and five, dealing with unconditional release, will greatly erode the finality of a judgement imposed by a district court causing a lot of unintended but real problems in administration. Essentially a probation officer may approach a district judge and request an unconditional early release from supervision. EXHIBIT(4)

{Tape : 2; Side : A; Approx. Time Counter : 14.7 - 22.8}

Dennis Paxinos, Yellowstone County Attorney, rose in opposition of the bill. Other than the two points that Mr. Grayson pointed out, HB 115 is a good bill. They cause severe problems and repercussions for prosecutors, judges and legislatures. These provisions run counter to the legislatures Crime Victim Relief Act that was passed last session. The victim is taken out of the process. Sentence reduction or having an offender released unconditionally will not allow for a victim to be notified. Truth in Sentencing Laws are not being complied with under this bill. Deferred sentencing upon completion of boot camp is too much of a reward for an offender. Boot camp is a good program in that it allows an offender to go into the camp and essentially write his own ticket to get out of prison. The idea of violent criminals going through the boot camp program and receiving a deferred imposition is too much. Offenders that are tried by a jury and sentenced by a judge to be incarcerated, need some mark to remain on this individuals record. With these changes, it is a good bill.

{Tape : 2; Side : A; Approx. Time Counter : 22.8 - 27.8}

Questions from Committee Members and Responses:

SEN. BARTLETT asked what the definition of conditional discharge is. Mr. Grayson responded saying that essentially when a probation officer has someone who is on probation and doing well and no longer, in the officer's opinion, needs to check in every month, can then go forward to the court and ask the judge to approve a conditional discharge from probation. Upon approval, the offender is still technically under the terms of their

suspended sentence but is still subject to being revoked. A conditional discharge can be revoked for other criminal violations. **SEN. BARTLETT** asked why provisions for victims input are not in place. **Mr. Grayson** said that the offenders are still under a certain degree of restriction that are imposed by the court.

{Tape : 2; Side : A; Approx. Time Counter : 27.8 - Tape : 2; Side : B; Approx. Time Counter : 0.5}

SEN. BARTLETT asked what the Interim Committee's thinking was in response to the County Attorney's two issues of concern, one being the unconditional discharge from supervision and the second being the potential for a deferred sentence if someone has been in through the boot camp even though they may have spent time in prison prior to that. **REP. MCGEE** responded by saying that he had a bill draft request in that came out of the Oversight Committee which would have allowed parole officers to grant offenders doing well on a day-to-day basis with a reward. Parole officers could also take this away. The Department had a bill and the Subcommittee had some thoughts and by the time they all got merged together, most of the things that were major concerns had been fixed and made into HB 115. This is an attempt to get to where we want to go, simply by giving them a reward, and encouraging them to learn how to live in society. If the offenders are doing well, recognize that they have messed up, paid their restitution, and the victim has been accounted for, then based on the recommendation of the parole officer, the court can decide what is appropriate.

{Tape : 2; Side : B; Approx. Time Counter : 0.5 - 6.5}

SEN. GROSSFIELD asked the same question to Judge Larson. **Judge Larson** noted that there are no amendments to the other requirements for a deferred sentence. A deferred sentence can not be awarded if an offender has previously been convicted of a felony even though that offence has been previously deferred. There is nothing in this bill that amends that.

{Tape : 2; Side : B; Approx. Time Counter : 6.5 - 10.1}

SEN. HALLIGAN asked if someone would respond to the Truth in Sentencing Provision. **Judge Larson** noted that if a recommendation to boot camp were in place, all the options would be on the table at that time. **Mr. Grayson** noted that this bill would apply to people who have already been sentenced. Victims, in the future, will have to be told that there is now a way to get off of probation earlier. People already having been sentenced will also qualify for this option. There is no way to go back and tell victims this.

{Tape : 2; Side : B; Approx. Time Counter : 10.1 - 12.6}

SEN. HALLIGAN asked if a suspended sentence is just as good as a deferred, or if it has the same effect. Would be possible to strike deferred from the bill and insert suspended. **SEN.**

CHRISTIENS noted that any time an individual is given an opportunity to be rewarded for doing the right thing more rise to the challenge. This allows for the inmate, or ex-offender, to demonstrate that they are willing to live as good, law abiding citizens. **SEN. HALLIGAN** asked Mike Ferriter the same question. He added that it is important to keep in mind that we are not talking about a lot of offenders, in either the conditional or unconditional or deferred. It is worth the one or two folks that the boot camp helps. This is an opportunity to move people through the system. The discretion of the district court judges are completely capable.

{Tape : 2; Side : B; Approx. Time Counter : 12.6 - 18.5}

SEN. JABS asked if essentially this bill would allow criminals to be released from parole without hearings and victim notification, and if parolees are currently being released without a hearing and without victims being notified. **Judge Larson** responded saying that currently he receives a notice, the sheriff is noticed, and the county attorneys are notified when the parole board is about to hear matters. All of the above mentioned are allowed to comment. **Judge Larson** referred to Mr. Ferriter's comments that there is a policy in place that states if there is an unconditional request for discharge, there is notification. At a minimum, there should be notification, but if requirement of judgement is successfully completed then only notification should be required, comment should be allowed, and then the judge should make the decision.

{Tape : 2; Side : B; Approx. Time Counter : 18.5 - 19.8}

SEN. JABS asked Judge Larson if there was really much difference in present law and this bill as far as notification is concerned. **Judge Larson** said that he thinks that we either need to have it in policy, either put it in statute and require notification, it doesn't make any difference in his case.

{Tape : 2; Side : B; Approx. Time Counter : 19.8 - 21.9}

SEN. HOLDEN directed a question to Mike Ferriter. As far as victims being notified in the unconditional release, the people of Montana are concerned that the victims are not being included in the process anymore. This bill may need an amendment that addresses the concern of unconditional discharge. **Mr. Ferriter** responded saying that certainly he is concerned about the victims rights and that he hopes that the probation officers will address that when they are writing their recommendation to the judge. An amendment that includes the victims rights would be reasonable.

{Tape : 2; Side : B; Approx. Time Counter : 21.9 - 28.2}

SEN. BARTLETT asked Judge Larson what specific instances that unconditional discharges would be appropriate and preferable to conditional discharge. **Judge Larson** said that in a conditional discharge, almost everything is completed. In an unconditional discharge, an individual can work hard and complete all the requirements, and have committed a non-violent act. **SEN.**

BARTLETT asked Judge Larson to give a brief description of how a deferred sentence works. **Judge Larson** said that records are not expunged under a deferred sentence. They are still available but sealed.

{Tape : 2; Side : B; Approx. Time Counter : 26.9 - Tape : 3; Side : A; Approx. Time Counter : 1.9}

Closing by Sponsor:

REP. MCGEE said that the creation of an amendment would be worked on. This bill was crafted by the Department of Corrections and by the members of the Oversight Committee keeping in mind the requests of the district court judges. There are a lot of good things in the bill as well as question marks that need to be addressed. The proposed budget for the Department of Corrections is \$190 million. The Community Corrections portion is about \$35 million. There are about eight thousand people in the system, over six thousand of which are in the Community Corrections Division. This bill is an attempt to provide tools to the Community Corrections Division.

{Tape : 3; Side : A; Approx. Time Counter : 1.9 - 5.8}

Additional information was entered into the record for HB 366.
EXHIBIT(5)

EXECUTIVE ACTION ON HB 227

Motion/Vote: **SEN. JABS** moved that HB 227 BE CONCURRED IN. Motion carried 8-0 with Dougherty being excused.

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB
527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB
257, HB 308, HB 374, HB 382,
HB 396

HEARING ON HB 374

Sponsor: REP. JOAN HURDLE, HD 13, Billings

Proponents: Allen Horsfall, Montana Board of Crime Control
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

vendors at competitive prices. CHAIRMAN GROSFIELD noted that the free market system should take care of that issue.

CHAIRMAN GROSFIELD said that it would be better to hold off executive action on this bill until a later time.

SEN. GRIMES withdrew his motion.

EXECUTIVE ACTION ON HB 308

Motion/Vote: SEN. DOHERTY moved that HB 308 BE CONCURRED IN. Motion carried 7-0.

{Tape : 3; Side : A; Approx. Time Counter : 12.7 - 13.5}

EXECUTIVE ACTION ON HB 382

Motion: SEN. HALLIGAN moved that HB 382 BE CONCURRED IN.

Discussion:

SEN. BISHOP asked if it would be possible to select jurors without using a list of electors. SEN. HALLIGAN maintained that it was all part of being involved in the democratic process. The jury is the buffer between the power of the state and the smallest individual. If someone doesn't want to take part in the incredible responsibility jury appointment establishes, then so be it.

SEN. BARTLETT noted that in some states drivers licenses, or a combination of drivers license and voter registration lists, are used in order to choose jurors.

Vote: Motion carried 7-0.

EXECUTIVE ACTION ON HB 115

Motion/Vote: SEN. HALLIGAN moved AMENDMENT HB011505.AVL, EXHIBIT(4), BE CONCURRED IN. Motion carried 7-0.

Motion/Vote: SEN. BARTLETT moved that AMENDMENT HB011502.AVL, EXHIBIT(5), BE CONCURRED IN. Motion carried 8-0.

Motion: SEN. HALLIGAN moved that HB 115 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HOLDEN asked if there were any provisions for victim notification on this bill. Valencia Lane responded that was an

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issue put into the Departments amendments in the case of an unconditional discharge. She added that **SEN. BARTLETT'S** amendments took out the unconditional discharge, thereby eliminating the need for that amendment.

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON HB 203

Motion/Vote: SEN. BARTLETT moved that AMENDMENT HB020303.AVL, EXHIBIT(6), BE CONCURRED IN. Motion carried 8-0.

Motion/Vote: SEN. BARTLETT moved that HB 203 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 27.5 - 36.2}

EXECUTIVE ACTION ON HB 257

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED.

Motion/Vote: SEN. HALLIGAN moved that AMENDMENT HB025701.AVL, EXHIBIT(7), BE CONCURRED IN. Motion carried 8-0.

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN GROSFIELD asked if this bill is essentially a sentence enhancement. There was no response offered for the record.

Vote: Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 36.2 - 43.2}

EXECUTIVE ACTION ON HB 527

Discussion:

SEN. HALLIGAN asked Mr. Browning if he had considered requiring the interlock system after the third and subsequent offense rather than the second. Mr. Browning remarked that originally it was to be required after the first offense if the individuals BAC level was above 0.18. The determination to have it apply to second and subsequent offences was that the first offense would be discretionary.

SEN. HALLIGAN asked why the judges are not using this now. Mr. Browning said that the problem is the lack of awareness. The expense has not entered into the discussion as a problem.



AN ACT INCREASING THE MAXIMUM COMMITMENT TO THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT ALL BUT THE FIRST 5 YEARS OF A COMMITMENT TO THE DEPARTMENT BE SUSPENDED; ALLOWING THE COURT TO SENTENCE AN OFFENDER DIRECTLY TO THE BOOT CAMP INCARCERATION PROGRAM; ALLOWING A PROBATION AND PAROLE OFFICER TO PROVIDE ORAL AUTHORIZATION TO ANOTHER OFFICER WITH THE POWER TO ARREST A PROBATIONER OR A PAROLEE IF THE PROBATION AND PAROLE OFFICER DELIVERS A WRITTEN STATEMENT TO THE PLACE OF DETENTION WITHIN 12 HOURS OF THE ARREST; ALLOWING A PROBATION AND PAROLE OFFICER TO IMPOSE NO MORE THAN A 30-DAY SANCTION FOR DEFENDANTS WHO HAVE VIOLATED CONDITIONS OF PROBATION; PROVIDING FOR A PROBATION VIOLATOR PRISON DIVERSION PROGRAM; SPECIFYING THAT AN ONSITE HEARING IS NOT REQUIRED IF A DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE LAW; ESTABLISHING A \$360 A YEAR MAXIMUM SUPERVISORY FEE PAYABLE BY A PROBATIONER OR PAROLEE; ALLOWING THE IMPOSITION OF A SUSPENDED SENTENCE UPON SUCCESSFUL COMPLETION OF THE BOOT CAMP INCARCERATION PROGRAM; CHANGING THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM; AMENDING SECTIONS 46-18-201, 46-23-1011, 46-23-1012, 46-23-1023, 46-23-1024, 46-23-1031, 53-30-401, AND 53-30-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The

sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) ~~jail~~ detention center base release;
- (ii) ~~jail time~~ incarceration in a detention center not exceeding 180 days;
- (iii) conditions for probation;
- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (x) community service;
- (xi) home arrest as provided in Title 46, chapter 18, part 10;
- (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;
- (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

or

(xiv) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403; or

(xv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(~~xiii~~)(xiv).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county ~~jail~~ detention center or state prison sentence, as provided in Title 45, for the offense; ~~or~~

~~(f) commit the defendant~~ commit:

(i) an offender not referred to in subsection (1)(f)(ii) to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

~~(f)(g)~~ with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

~~(g)(h)~~ with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

~~(h)(i)~~ impose any combination of subsections (1)(b) through ~~(f)(g)~~ (1)(h).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for ~~jail~~ time served in a detention center or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 2. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

- (i) the court determines that a conditional discharge from supervision:
 - (A) is in the best interests of the probationer and society; and
 - (B) will not present unreasonable risk of danger to the victim of the offense; and
- (ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

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(c) If the department certifies to the court that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the court may not place an offender on probation under supervision by that district office unless it grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the court for conditional discharge. The court may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 3. Section 46-23-1012, MCA, is amended to read:

"46-23-1012. Arrest when violations of probation alleged -- probation compliance plan -- probation violator prison diversion program. (1) At any time during probation or suspension of sentence, a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. ~~Such~~ The notice ~~shall~~ must be personally served upon the defendant. The warrant ~~shall~~ must authorize all officers named ~~therein~~ in the warrant to return ~~such~~ the defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest ~~such~~ the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer oral authorization and within 12 hours delivering to the place of detention ~~him~~ a written statement setting forth that the defendant has, in the judgment of ~~said~~ the probation and parole officer, violated the conditions of ~~his~~ the defendant's release. ~~Such~~ A written statement or oral authorization delivered with the defendant by the arresting officer to the official in charge of a county ~~jail~~ detention center or other place of detention ~~shall be~~ is sufficient warrant for the detention of the defendant if the probation and parole officer delivers the written statement within 12 hours of the defendant's arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of ~~persons~~ a person charged with a crime ~~shall be~~ are applicable to the defendants arrested under these provisions.

(4) Any probation and parole officer may hold a defendant arrested under subsection (1) without

bail for 72 hours. After the arrest of the defendant pursuant to this subsection, a hearings officer for the probation and parole bureau shall hold a hearing within 36 hours of the defendant's arrest. The hearings officer shall determine whether there is probable cause to believe that the defendant has violated a condition of probation and, if probable cause exists, notify the sentencing court and determine an appropriate plan to ensure the defendant's compliance with the conditions of probation. An appropriate plan may include:

(a) holding the defendant for a period of time up to 30 days, with credit for any time served from the time of the arrest to the time of the hearing to determine probable cause;

(b) a request to the court pursuant to 46-23-1011 to modify the defendant's terms or conditions of probation; or

(c) a notification to the court with jurisdiction over the defendant pursuant to 46-23-1013.

(5) The department shall adopt policies and procedures to implement a probation violator prison diversion program. If the department is able to sufficiently sanction a defendant with a term in a detention center as provided in subsection (4)(a) for a proven technical violation that could result in the revocation of a suspended or deferred sentence, the department may pay the expense of the detention center costs and pursue payment of costs by the defendant as provided in 7-32-2245. If the action plan developed for the defendant proceeds as provided in subsection (4)(b) or (4)(c), the expenses of the detention must be paid as provided in 7-32-2242."

Section 4. Program evaluation -- report to legislature. The department shall develop evaluation measures to determine and shall report to the 57th and 58th legislatures whether the probation violator prison diversion program:

- (1) enhanced the department's ability to sanction probation violators and divert them from prison;
- (2) demonstrated a decline in prison admissions for probation violators; and
- (3) demonstrated policies and procedures of graduated sanctions that increased compliance with the conditions of probation and decreased technical violations among probation violators for whom the detention center sanction was used.

Section 5. Section 46-23-1023, MCA, is amended to read:

"46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the ~~released-prisoner~~ parolee for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice ~~shall~~ must be served personally upon the ~~prisoner~~ parolee. The warrant ~~shall~~ must authorize all officers named ~~therein~~ in the warrant to return the ~~prisoner~~ parolee to the actual custody of the penal institution from which ~~he~~ the parolee was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the ~~prisoner~~ parolee without a warrant or may deputize any other officer with power to arrest to do so by giving ~~him~~ the officer oral authorization and within 12 hours delivering to the place of detention a written statement setting forth that the ~~prisoner~~ parolee has, in the judgment of the probation and parole officer, violated the conditions of ~~his~~ the parolee's release. ~~The~~ A written statement or oral authorization delivered with the ~~prisoner~~ parolee by the arresting officer to the official in charge of the institution from which the ~~prisoner~~ parolee was released or other place of detention ~~shall be~~ is sufficient warrant for the detention of the parolee or conditional releasee if the probation and parole officer delivers a written statement within 12 hours of the arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending a hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the ~~prisoner~~ parolee may, if circumstances warrant, be incarcerated in the institution."

Section 6. Section 46-23-1024, MCA, is amended to read:

"46-23-1024. Initial hearing after arrest. (1) After the arrest of the ~~prisoner~~ parolee, a hearing must be held within a reasonable time, unless:

(a) the hearing is waived by the parolee; or

(b) the parolee has been charged in any court with a violation of the law.

(2) The hearing is an onsite hearing and must be held to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts ~~which~~ that would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, ~~must~~ shall preside over the hearing. The hearing must be conducted at or reasonably near the place of the

alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own behalf and introduce relevant information to the hearings officer.

~~(2)~~(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025."

Section 7. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees -- account established. (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. The fee must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) District court clerks shall deduct from the total fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a)."

Section 8. Section 53-30-401, MCA, is amended to read:

"53-30-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Reduction of sentence" includes changing an incarceration sentence to a ~~grant of probation~~

suspended sentence."

Section 9. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp incarceration program -- eligibility -- rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate must:

(a) be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by ~~life imprisonment or death~~, except as provided in 46-18-201(1)(a)(xiv);

(b) ~~be less than 35 years of age~~ obtain the concurrence of the sentencing court; and

(c) pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Section 10. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 4].

Section 11. Coordination instruction. If House Bill No. 81 and [this act] are both passed and approved and if both contain amendments to 46-18-201(1)(e), then the amendments to 46-18-201(1)(e) contained in House Bill No. 81 are void.

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Applicability. (1) [Section 1] applies to all persons sentenced on or after [the effective date of this act].

(2) [Section 2] applies to all persons under probation or parole supervision on or after [the effective date of this act].

(3) [Sections 8 and 9] apply to all persons under the custody of the department of corrections on or after [the effective date of this act].

- END -

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